

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

MCC NON FERROUS TRADING INC.,

Plaintiff,

vs.

14 Civ. 8302 (JCF)

AGCS MARINE INSURANCE COMPANY,

Defendant.

**LOCAL CIVIL RULE 56.1 STATEMENT OF  
UNDISPUTED FACTS IN SUPPORT OF DEFENDANT'S  
CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE  
INTERPRETATION OF CLAUSES 52 AND 53**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Civil Rule 56.1(a) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, AGCS Marine Insurance Company contends that there is no genuine issue to be tried as to the following material facts:

1. Clause 5 of Ocean Marine Cargo Policy No. OC 91257500 (the "Policy") and the relevant declaration page define "goods insured" as "all lawful goods and/or merchandise consisting principally of Scrap Metals and/or Metallurgic Coke and/or Unfinished Metal products and/or Ores, and/or Concentrates and/or Alloys." Exhibit "A" to Declaration of Joshua Gold in Support of Plaintiff's Motion for Summary Judgment on Allianz Defenses Regarding Theft with Fraudulent Intent and the "Infidelity" Exclusion ("Gold Decl") at cl. 5 & AGCS Cargo Policy Declaration Page dated January 18, 2013.

2. Clause 36 and the relevant declaration page of the Policy state that the Policy insures "goods insured" "against all risks of physical loss or damage from any external cause, except as noted in this policy (and excepting such risks as are excluded by the Paramount

Warranties in this Policy)." Exhibit "A" to Gold Decl at cl. 36 & AGCS Cargo Policy Declaration Page dated January 18, 2013.

3. Clause 52 of the Policy states:

This insurance is also specifically to cover goods purchased and paid for by the Assured on terms which do not obligate them to provide insurance, if there is loss or damage from a peril insured herein, and the Assured cannot collect from the seller, insurance provided by the seller, or other party, because of refusal or inability to pay.

This Company shall advance to the Assured, as a loan, the amount of loss as provided herein. Such loss to be repayable upon remittance of the sum due the Assured by the seller, the insurance provided by the seller or otherwise.

Goods insured under this coverage shall be valued at the amount of the seller's invoice, plus freight and other charges (if not included in the invoice). This insurance is for the sole account of the Assured and in no event is it to inure to the benefit of sellers, their insurers or any other party.

It is a condition precedent to this coverage that the Assured shall not divulge the existence of this coverage to any party. Such disclosure shall void coverage provided by this clause.

The Assured shall preserve their rights against the seller and the insurance provided by the seller or other parties and, upon receipt of payment from this Company, shall subrogate to this Company all such rights and shall give assistance, other than pecuniary, in enforcing them.

Exhibit "A" to Gold Decl at cl. 52

4. Clause 53 of the Policy states:

If any goods insured hereunder are covered by other insurance, this insurance is also specifically to cover:

1. Difference In Conditions:

Any perils not covered by other insurance but which are covered under the terms of this Policy.

2. Increased Value:

Any difference between the value insured by other insurance and the value in accordance with the applicable valuation clause of this Policy.

3. Guarantee of Collectability:

If the Assured cannot collect under other insurance for loss and/or damage by perils covered under the terms of this Policy, this Company shall advance, as a loan, the amount of loss as provided herein. Such loss is to be repayable upon remittance of any sum due from other insurance.

Exhibit "A" to Gold Decl at cl. 53.

Dated: New York, New York  
March 11, 2015

NICOLETTI HORNIG & SWEENEY  
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